

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Petition of Intrado)
Communications Inc. For Arbitration)
Pursuant to Section 252(b) of the)
Communications Act of 1934, as amended,)
to Establish an Interconnection Agreement)
with Verizon North, Inc.)

Case No. 08-198-TP-ARB

VERIZON'S APPLICATION FOR REHEARING

Pursuant to Revised Code Section 4903.10 and Ohio Admin. Code §4901-1-35, Verizon North Inc. ("Verizon") seeks rehearing of the Commission's June 24, 2009, Arbitration Award in this matter (the "Award"). Verizon seeks rehearing with respect to the following matters, each of which is fully addressed in the attached Memorandum in Support:

1. Issue 10: The Award's adoption of Intrado's arbitrary interconnection rates has no basis in law or in fact. The ruling is based on the incorrect presumption that Verizon will impose analogous charges on Intrado. But Verizon does *not* charge Intrado or other carriers to connect to its selective routers in Ohio. Because the Commission's rationale for imposing Intrado's DS0 and DS1 port rates is wrong, and because those rates lack any support, there is no basis on which the rates can be deemed appropriate, just or reasonable. The Commission should grant rehearing, reverse its adoption of Intrado's proposed rates, and reject them as unsupported, unreasonable and arbitrary.
2. Issue 1: The Commission should grant rehearing of the Award's ruling requiring Verizon to interconnect with Intrado at a point within Intrado's network. The Commission's conclusion is based on a faulty interpretation of a decision of the Federal Communications Commission ("FCC") that addressed the allocation of costs related to the implementation of enhanced 911 services for wireless carriers, not interconnection under section 251(c) of the Communications Act of 1934, as amended ("the Act"). In addition, the Commission mistakenly relied on section 251(a) of the Act to require Verizon to interconnect within Intrado's network, when neither Verizon nor Intrado requested section 251(a) interconnection. Intrado requested interconnection solely pursuant to section 251(c), so the Commission was required to analyze Intrado's proposals under that

section. Its ruling requiring Verizon to interconnect on Intrado's network under section 251(a) is unlawful and should be reversed.

As explained in Verizon's Memorandum in Support of this Application, the Commission should grant rehearing of its Award and reverse its rulings with respect to the issues described above.

Respectfully submitted,

Dated: July 24, 2009

Verizon North Inc.

By: /s/ Thomas E. Lodge

Thomas E. Lodge
Thompson Hine LLP
41 South High Street, Suite 1700
Columbus, OH 43215
(614) 469-3246 (telephone)
(614) 469-3361 (facsimile)
tom.lodge@thompsonhine.com

Darrell Townsley
205 North Michigan Avenue
Suite 700
Chicago, Illinois 60601
(312) 260-3533 (telephone)
(312) 470-5571 (facsimile)
darrell.townsley@verizon.com

A. Randall Vogelzang
General Counsel
Verizon Great Lakes Region
Verizon
HQE02J27
600 Hidden Ridge
Irving, TX 75038
(972) 718-2170 (telephone)
(972) 718 0936 (facsimile)
randy.vogelzang@verizon.com

Its Attorneys

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Petition of Intrado)	
Communications Inc. For Arbitration)	
Pursuant to Section 252(b) of the)	
Communications Act of 1934, as amended,)	Case No. 08-198-TP-ARB
to Establish an Interconnection Agreement)	
with Verizon North, Inc.)	

MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING

Verizon North Inc. ("Verizon") submits this Memorandum in support of its application for rehearing of the Commission's Arbitration Award issued in this matter on June 24, 2009.¹ In support of its application for rehearing, Verizon states as follows.

1. Issue 10

The Award's adoption of Intrado's arbitrary interconnection rates has no basis in law or in fact. The ruling is based on the incorrect presumption that Verizon will impose analogous charges on Intrado. But Verizon does not charge Intrado or other carriers to connect to its selective routers in Ohio. Because the Commission's rationale for imposing Intrado's DS0 and DS1 port rates is wrong, and because those rates lack any support, there is no basis on which the rates can be deemed appropriate, just or reasonable. The Commission should grant rehearing, reverse its adoption of Intrado's proposed rates, and reject them as unsupported, unreasonable and arbitrary.

In a very brief ruling, the Award adopts Intrado's proposed "interconnection" rates for DS1 ports (\$127 recurring and \$250 non-recurring per DS1) and DS0 ports (\$40 recurring and \$250 non-recurring per DS0). This ruling is based on the Commission's conclusion that Intrado should be allowed to charge Verizon for the same facilities for which Verizon charges other carriers when interconnecting for 911 purposes. (Award at 32.) Leaving aside the fundamental mistake (discussed in the following section) that Verizon cannot be required to interconnect at a

¹ Nothing in Verizon's Application for Rehearing or its supporting Memorandum should be construed as conceding that Intrado is entitled to interconnection with Verizon under section 251(c) of the Act. The 911 services Intrado plans to provide under its interconnection agreement with Verizon do not entitle it to section 251(c) interconnection.

point within Intrado's network, the Commission's ruling approving Intrado's port charges should be reversed because it is based on a mistake of fact.² The Commission determined that Intrado should be allowed to charge Verizon to interconnect to its selective router because Verizon imposes the same charges on other carriers. As the Commission observes, Intrado argued that its proposed rates are appropriate because they are "similar to those charged by Verizon for trunk ports and connections to its network" and "Intrado Comm should have reciprocal rights to charge Verizon 'port' or 'termination' charges when Verizon interconnects with Intrado Comm's network." (Award at 29-30 (*citing* Joint Issues Matrix at 25)). The Award erroneously infers that Intrado's argument is correct, but nothing in the record supports that conclusion.

Intrado failed to come up with any support for its claim that Verizon assesses like charges to carriers to interconnect to its selective routers. (*See, e.g.*, Intrado Ex. 1 at 29; Transcript ("Tr.") at 22). During the arbitration, Verizon made clear that it did not know what Intrado's proposed charges could be for, and Intrado never told Verizon what the supposedly analogous Verizon charges were. (Verizon Ex. 1 at 72; Verizon Initial Brief at 42-43.) Although Intrado claimed that it was entitled to be paid for the same services for which Verizon charges, Intrado did not try to identify the charges Verizon supposedly imposes on other carriers to connect to its selective routers. Nevertheless, the Award erroneously assumes that Verizon has such analogous charges when carriers interconnect at Verizon's selective routers (Award at 31, *citing* Tr. at 135.) But the Award's citation to testimony from the hearing doesn't support that assertion. The colloquy between Verizon witness D'Amico and arbitration panel member Kotting, and the context of that discussion, does not demonstrate that Verizon will charge Intrado (or any carrier)

² *See Doc Goodrich & Son, Inc. v. Pub Util. Comm.* (1978) 53 Ohio St.2d 70 (on rehearing commission found no evidence to support decision, reversal warranted). *See also* Revised Code §4903.10(B) ("If, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same.")

a port charge to interconnect with its selective routers:

Q. Okay. I'm going to refer you back to your testimony. Hang on here. My notes are based on line numbers so it's going to take me a moment to get to the page. Page 70 at 1645 through 1652 you indicate "Intrado must pay Verizon for interconnection at the POI on Verizon's network (for instance, collocation charges) and must pay for any facilities and services provided by Verizon to carry the calls between the POI on Intrado's network that are provided by Verizon." And then you note the "transport and termination of 9-1-1/E9-1-1 calls will be handled on a non-charged basis."

So to summarize that, you're indicating that you'll be charging for the point of interconnection as well as facilities used to carry 9-1-1 calls but you're not charging for transport and termination?

A. Beyond the POI on Verizon's network.

Q. Okay. Would it be accurate to say that you recognize a distinction between the physical facilities used to transport and terminate and the actual carriage of calls?

A. Yes.

Q. And Verizon will charge Intrado for the facilities but not for the calls themselves?

A. Correct. Although I want to make sure that when we're talking facilities, those facilities are from Intrado's location to a POI on Verizon's network, and then there's no charge for the call on those facilities. But even from Verizon's POI, from the POI on Verizon's network to, say, the appropriate PSAP there's a call that's going on those facilities and those calls would not be charged either.

Q. Understood. With regard to Intrado's proposed trunk port charges, those wouldn't be incurred if Intrado is required to site its interconnect on Verizon's network?

A. Correct.

Q. On page 77 you talk about Intrado collocating on Verizon's network and if they do so, they would be charged from the collocation price schedule?

A. Yes.

Q. So even though Intrado has the right to collocate, they might choose not to do so and avoid being charged for collocation, correct?

A. Correct.

Q. Similarly, Intrado has a right to request an interconnect on Verizon's network, but may, for other reasons, not do so?

A. When you say not do so, if that means that they would purchase facilities from Verizon or someone else to get to a POI on Verizon's network, then that could be an option.

(Tr. at 133-136.)

Nothing in this discussion, or anywhere else in the record, demonstrates that Verizon charges Intrado or other carriers to interconnect to its selective routers, which is what Intrado's port charges are for.³ The record cited by the order merely illustrates that Verizon will offer to lease Intrado *transport facilities* to connect its network to Verizon's selective routers, not that it will assess port charges. Intrado's ability to charge Verizon for interconnecting to Intrado's selective router cannot be justified based on the mistaken conclusion that Verizon imposes similar charges on Intrado or other carriers. In fact, where Verizon serves Public Safety Answering Points ("PSAPs") in Ohio, Verizon *does not* charge other carriers for interconnecting to its selective routers to deliver their customers' 911 calls. By proposing to impose such charges on Verizon (and, presumably, all other carriers that interconnect with Intrado), Intrado is attempting to shift its 911 costs to other carriers and gain an unfair competitive advantage in marketing its services to local 911 authorities.

Even if the Commission's assumption that Verizon charges other carriers for interconnection for 911 traffic were correct (and it is not), the ruling would still be unlawful because Intrado produced *nothing* to support the level of those rates. Its entire case in support of its proposed rates consisted of just three sentences of testimony (Intrado Ex. 1 (Currier Direct Testimony at 29, lines 1-6)) and a two-line "IEN Interconnection Pricing Schedule" simply

³ Intrado's proposed 9-1-1 Attachment section 1.3.4(i) provides that the POI will be at Intrado's 911 Tandem/Selective Router.

listing “Per DS0” and “Per DS1” rates, without any description of what the rates are for (Currier Direct Testimony Att. 6).⁴ Indeed, Intrado *deliberately* declined to provide any support for its rates because it took the position that state commissions do not have the authority in a section 252 arbitration proceeding to determine a competitor’s rates. (Intrado Ex. 1 at 30).

Although the Commission rejected this argument (Award at 32), it never took the next step of engaging in any inquiry about the reasonableness of those rates, or of their conformity to Ohio and federal law, as it is obligated to do.⁵ Other than stating that Pricing Attachment Appendix B, captioned “Intrado Comm Services” should be adopted, the Award makes no finding and provides no explanation as to why Intrado’s proposed rates are appropriate. (Award at 31-32.) While the Award recites Intrado’s argument that the Commission should approve its interconnection rates in this case because it did so in Intrado’s arbitration with Cincinnati Bell,⁶ the Award does not state that it is requiring adoption of Intrado’s rates because of its adoption of the rates in another proceeding – nor could it, because the decision here must be based on the factual record in *this* case. And, contrary to Intrado’s suggestion (Intrado Initial Brief at 57), the Commission did not, in the Intrado/Cincinnati Bell case, find Intrado’s proposed port or

⁴ In its initial brief (which is not evidence), Intrado belatedly identified “facility termination” rates for DS0 and DS1 facilities from the interconnection agreement’s collocation rates and “transport termination” for DS1 and DS3 in Verizon’s special access tariff as examples of similar charges Intrado or other carriers might incur to interconnect to Verizon’s network. (Intrado Initial Brief at 57.) The rates Intrado cites do not apply to interconnection with Verizon’s selective routers since Verizon does not charge other carriers to connect to its selective routers in Ohio. Moreover, even assuming for the sake of argument these rates are for comparable functions (and they are not), Verizon’s monthly recurring “facility termination” rate for DS0 circuits is \$3.33 per 100 pairs (compared to Intrado’s proposal of \$40.00 per DS0), and for DS1 circuits is \$16.58 per 28 pairs (compared to Intrado’s proposal of \$127.00 per DS1), while Verizon’s non-recurring rate for DS0 Cable Termination is \$4.17 per 100 pairs (compared to Intrado’s proposal of \$250.00 per DS0) and for DS1 Cable Termination is \$1.04 per 28 pairs (compared to Intrado’s proposal of \$250.00 per DS1). See Interconnection agreement at page 170, Pricing Attachment A, Section IV collocation rates. Intrado’s proposed rates are, therefore, hundreds of times greater than the Verizon rates Intrado claims are similar.

⁵ See Revised Code §§4905.04, 4905.041.

⁶ *In the Matter of the Petition of Intrado Communications, Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, to Establish an Interconnection Agreement with Cincinnati Bell Telephone Company*, Case No. 08-537-TP-ARB (The “Intrado/Cincinnati Bell Case”)

termination rates to be “reasonable” as a general matter. Rather, lacking any evidence for an affirmative finding that Intrado’s rates were reasonable, the Commission approved them for both Intrado and Cincinnati Bell *to the extent either party purchased trunk ports from the other*. (Intrado/Cincinnati Bell Case, Arbitration Award at 22 (October 8, 2008)). Again, the facts in *this* record do not support the conclusion that port charges will be reciprocal.

Intrado had the burden to prove the reasonableness of its rates and made no attempt to do so with cost or other justification. So even if Intrado had clearly described the services or functions to which its proposed rates are intended to apply (and it did not), and even if it were entitled to some payment (and it is not), the Commission has no choice but to reject Intrado’s proposed rates because Intrado provided absolutely no support for them. There is no evidence, let alone the competent and probative evidence, to support the Commission’s decision approving those rates, and so the Award must be reversed.⁷

Because the Commission’s ruling rests on the mistaken assumption that Verizon charges other carriers for ports to interconnect to its selective routers, and because there is, in any event, no evidence to support the reasonableness of Intrado’s rates, the Commission’s ruling on Issue 10 should be reversed. The Commission should direct the parties to delete Intrado’s proposed Appendix A to the Pricing Attachment, Part B, captioned “Intrado Comm Services,” from the conformed interconnection agreement.

⁷ See *Indus. Energy Users – Ohio v. Pub. Util. Comm.*, 117 Ohio St.3d 486, 493, 2008-Ohio-990 (quoting *Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87, 90 (“A legion of cases establish that the commission abuses its discretion if it renders an opinion on an issue without record support.”)).

2. Issue 1

The Commission should grant rehearing of the Award's ruling requiring Verizon to interconnect with Intrado at a point within Intrado's network. The Commission's conclusion is based on a faulty interpretation of a decision of the Federal Communications Commission ("FCC") that addressed the allocation of costs related to the implementation of enhanced 911 services for wireless carriers, not interconnection under section 251(c) of the Communications Act of 1934, as amended ("the Act"). In addition, the Commission mistakenly relied on section 251(a) of the Act to require Verizon to interconnect within Intrado's network, when neither Verizon nor Intrado requested section 251(a) interconnection. Intrado requested interconnection solely pursuant to section 251(c), so the Commission was required to analyze Intrado's proposals under that section. Its ruling requiring Verizon to interconnect on Intrado's network under section 251(a) is unlawful and should be reversed.

With respect to the issue of the location of the point of interconnection ("POI"), the Award finds that where Intrado is the 911 service provider for a PSAP that serves Verizon end user customers, Verizon must interconnect to a POI on Intrado's selective router, as long as that selective router is within Verizon's service territory. Specifically, the Award finds:

With regard to the location of the POI, the Commission has previously determined that, consistent with the FCC's finding in *In the Matter of the Revision of the Commissions Rules to Ensure Compatibility with Enhanced 9-1-1 Emergency System, Request of King County*, 17 FCC Rec. 14789, ¶1 (2002), and with certain geographic limitations, the POI for 9-1-1 traffic should be at the selective router of the E9-1-1 service provider that serves the caller's designated PSAP.

(Award at 5.)

The Award determines that section 251(c) interconnection obligations under the Act govern relationships between ILECs and CLECs for the purpose of terminating 911 calls from CLECs to a PSAP served by the ILEC, but that section 251(a) of the Act governs interconnection arrangements when ILEC customers' 9-1-1 calls are terminated to a PSAP served by Intrado.

(*Id.*)

As an initial matter, the Commission's reliance on the *King County* case is misplaced.⁸ The Federal Communications Commission ("FCC") has not determined that, when a 911 call is made, the carrier must bring the 911 call to the 911 selective router serving the PSAP, as the Award seems to presume. Nor did the FCC determine that the POI must be at the selective router of the carrier serving the PSAP. Indeed, the case had nothing at all to do with POIs, section 251, interconnection agreements, or any aspect of ILECs' relationship with interconnecting carriers. In *King County*, the FCC settled a dispute between *wireless carriers and PSAPs* with respect to the allocation of costs between them for the implementation of wireless enhanced 911 service. The FCC affirmed its Wireless Telecommunications Bureau's interpretation of FCC rule 20.18(d) to require that: "The proper demarcation point for allocating costs between the wireless carriers and the PSAPs is the input to the 911 Selective Router maintained by the Incumbent Local Exchange Carrier (ILEC)." (*King County*, ¶ 4, quoting King County Letter at 1 (emphasis added)).

The FCC's establishment of a paradigm for allocating the costs of implementing wireless E911 services as between wireless carriers and PSAPs when the wireless carriers interconnect with a 911 Selective Router maintained by an ILEC has nothing do with the issue of where the POI must be under a section 251(c) interconnection agreement, and nothing to do with competitive provision of 911/E911 services. No FCC precedent authorizes this Commission to ignore the Act and the FCC's rule for the POI to be within the ILEC's network. Thus, the Award erroneously references the FCC's decision in the *King County* case as a basis for finding that the

⁸ See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request of King County*, Order on Reconsideration, 17 FCC Rcd 14789 (2002) ("*King County*") (supplied as Attachment 1); Letter from Thomas J. Sugrue, Chief, Wireless Telecomm. Bureau, FCC, to Marlys R. Davis, E911 Program Manager, Dep't of Information and Admin. Services, King County, Washington, WT Docket No. 94-102 (dated May 7, 2001) ("*King County Letter*") (supplied as Attachment 2).

selective router of the carrier serving the PSAP must be the point of interconnection. (*Id.*) The Commission should find, as the Massachusetts Department of Telecommunications and Cable (“DTC”) did,⁹ that “Verizon is correct that the King County Order is inapplicable to the current arbitration...King County resolved a dispute between wireless carriers and PSAPs with respect to the allocation of 911/E-911 traffic costs between them and is, contrary to Intrado’s assertions, unrelated to interconnection obligations between carriers.” *Mass. Order*, at 33 n. 25 (citations omitted). Alternatively, if the Commission wishes to rely on *King County*, in order to be consistent with that decision it must recognize the POI must be “the input to the 911 selective router maintained by the Incumbent Local Exchange Carrier.”

The Award’s more egregious error, however, is its unlawful decision to unilaterally recast Intrado’s petition for arbitration from a petition requesting 251(c) interconnection to a petition for arbitration pursuant to section 251(a) of the Act.

First, the Act does not authorize the Commission to force Verizon and Intrado into arbitration of a commercial agreement under section 251(a) (which requires all carriers to interconnect with each other) or otherwise. Verizon has *not* sought interconnection with Intrado under section 251(a); Verizon has *not* agreed to interconnect with Intrado on Intrado’s network under section 251(a) or otherwise; Intrado did *not* seek to negotiate section 251(a) terms with Verizon; and neither Intrado nor Verizon has asked the Commission to resolve any issues under section 251(a). Although Verizon and Intrado vigorously disagree about the nature of Verizon’s obligations under section 251(c), there is no disagreement that section 251(c) governs Intrado’s arbitration petition here and the issues it raises. (*See, e.g.,* Intrado Ex. 1.0 (Currier) at 8-9.)

⁹ Petition for Arbitration of an Interconnection Agreement Between Intrado Comm. Inc. and Verizon New England Inc. d/b/a Verizon Massachusetts, Arbitration Order, DTC 08-09 (“*Mass Order*”) (May 8, 2009).

The ILEC's "duty to negotiate" interconnection terms is specifically set forth in section 251(c)(1);¹⁰ section 251(a) says nothing about negotiations or arbitration. As a federal District Court in Texas found in ruling that a company cannot be compelled to arbitrate an agreement with respect to duties under section 251(a), "[a]lthough there are duties established by § 251(a)...the Court cannot find any language in the Act indicating that these duties independently give rise to a duty to negotiate or to arbitrate."¹¹ So, even if Intrado and Verizon had already tried and failed to negotiate commercial interconnection terms under section 251(a) (and they have not), this section 252 arbitration would not be the appropriate vehicle for resolution of their disputes.¹²

Second, assuming for the sake of argument the Commission has the authority to recast Intrado's 251(c) request for interconnection as a voluntarily negotiated 251(a) request for interconnection (which it cannot), nothing in Section 251(a) (which requires all telecommunications carriers "to interconnect directly or indirectly with the facilities and equipment of other carriers") requires Verizon to interconnect with Intrado on Intrado's network. Indeed, although the Commission acknowledges that it could not require Verizon to interconnect on Intrado's network Verizon under section 251(c) of the Act (Award, at 5), it requires Verizon to undertake that obligation under section 251(a), which does not even require direct connection. An ILEC cannot be required to interconnect under 251(a) in a way that imposes even greater

¹⁰ 47 U.S.C. § 251(c)(1). *See also* 47 C.F.R. § 51.301(a) ("[a]n incumbent LEC shall negotiate in good faith the terms and conditions of agreements to fulfill the duties established by sections 251(b) and (c) of the Act"). Section 51.100 of the FCC's rules, which addresses the duties of telecommunications carriers under section 251(a) of the Act, never mentions a duty to negotiate. 47 C.F.R. § 51.100.

¹¹ *Sprint v. Pub. Util. Comm'n of Texas, Order and Brazos Tel. Coop., Inc.*, Case No. A-06-CA-0650-SS, 2006 U.S. Dist. LEXIS 96569 (Aug. 14, 2006), at 16. (Appended to and identified as Attachment 1 to Verizon's Initial Brief.)

¹² Revised Code §4905.041(A) prohibits the Commission from "establish[ing] any requirements for the unbundling of network elements, for the resale of telecommunications services, or for network interconnection that exceed or are inconsistent with or prohibited by federal law, including federal regulations."

obligations on it than the detailed obligations the ILEC must satisfy under section 251(c). The Commission's contrary result makes no sense and grossly distorts the section 251 framework for interconnection Congress adopted.

For these reasons, the Commission should reverse the Award's finding that Verizon must interconnect on Intrado's network when Intrado serves the PSAP, and should instead require Intrado to designate a point of interconnection on Verizon's network.

CONCLUSION

For the reasons stated above, Verizon requests that the Commission grant its application for rehearing and modify the Award consistent with the recommendations contained herein.

Respectfully submitted,

Dated: July 24, 2009

Verizon North Inc.

By: /s/ Thomas E. Lodge

Thomas E. Lodge
Thompson Hine LLP
41 South High Street, Suite 1700
Columbus, OH 43215
(614) 469-3246 (telephone)
(614) 469-3361 (facsimile)
tom.lodge@thompsonhine.com

Darrell Townsley
205 North Michigan Avenue
Suite 700
Chicago, Illinois 60601
(312) 260-3533 (telephone)
(312) 470-5571 (facsimile)
darrell.townsley@verizon.com

A. Randall Vogelzang
General Counsel
Verizon Great Lakes Region
Verizon
HQE02J27
600 Hidden Ridge
Irving, TX 75038
(972) 718-2170 (telephone)
(972) 718 0936 (facsimile)
randy.vogelzang@verizon.com

Its Attorneys

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served upon all parties listed below, by electronic service, this 24th day of July, 2009.

Chérie R. Kiser
Cahill Gordon & Reindel LLP
1990 K Street, N.W., Suite 950
Washington, DC 20006
202-862-8950 (telephone)
202-862-8958 (facsimile)
ckiser@cgrdc.com

Angela F. Collins
Cahill Gordon & Reindel LLP
1990 K Street, N.W., Suite 950
Washington, DC 20006
202-862-8930 (telephone)
202-862-8958 (facsimile)
acollins@cgrdc.com

/s/ Thomas E. Lodge
Thomas E. Lodge

620794.2

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of)
)
Revision of the Commission's Rules To Ensure)
Compatibility with Enhanced 911 Emergency) CC Docket No. 94-102
Calling Systems)
)
Request of King County, Washington)
)
)

ORDER ON RECONSIDERATION

Adopted: May 14, 2002

Released: July 24, 2002

By the Commission: Commissioner Copps issuing a statement.

I. INTRODUCTION

1. In May 2001, the Wireless Telecommunications Bureau (Bureau) issued a decision identifying the 911 Selective Router as the demarcation point for allocating Enhanced 911 (E911) implementation costs between wireless carriers and Public Safety Answering Points (PSAPs), in those instances where the parties cannot agree on the appropriate demarcation point.¹ In response to a Petition for Reconsideration, the Commission hereby affirms the Bureau's decision. We find that the cost-allocation point for E911 implementation should be that point at which the system identifies the appropriate PSAP and distributes the voice call and location data to that PSAP. We also find that clarifying the demarcation point for E911 cost allocations will expedite the roll-out of wireless E911 services by helping to eliminate a major source of disagreement between the parties so as to facilitate the negotiation process.

II. BACKGROUND

2. The Commission initially required that a cost recovery mechanism be in place for both the wireless carrier and the PSAP before the carrier would be obligated to deliver E911 service.² In the *E911 Second Memorandum Opinion and Order*, the Commission found that disputes about cost recovery had become a significant impediment to the implementation of E911 Phase I and eliminated the carrier cost-recovery requirement, but not the PSAP cost-recovery requirement.³ On May 25, 2000, the King County,

¹ See Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, to Marlys R. Davis, E911 Program Manager, Department of Information and Administrative Services, King County, Washington (May 7, 2001)(*King County Letter*).

² See Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 18676, 18692-97, paras. 29-42, (1996)(*E911 First Report and Order*).

³ See Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Second Memorandum Opinion and Order*, 14 FCC Rcd 20850 (1999)(*E911 Second Memorandum Opinion and Order*). In consequence, a carrier's obligation to provide E911 service is

(continued....)

Washington E911 Program Office filed a request with the Bureau for assistance in resolving a conflict related to the implementation of wireless E911 Phase I service in Washington State. Specifically, King County inquired whether the funding of Phase I network and database components, and the interface of these components with the existing E911 system, is the responsibility of the wireless carrier or the PSAP.⁴

3. In its response to King County's request, the Bureau determined that, in the absence of an agreement to the contrary between the parties, the 911 Selective Router serves as the demarcation point for allocating E911 implementation costs. However, the Bureau emphasized that "the Commission continues to favor negotiation between the parties as the most efficacious and efficient means for resolving disputes regarding cost allocations for implementing Phase I."⁵ Noting that a variety of situations exists in approximately 6,000 PSAPs across the nation, including differences in state laws, the configuration and technical sophistication of existing network components used to provide E911 service, and agreements between carriers and PSAPs, the Bureau observed that the application of "a uniform federal mandate that prevents the relevant stakeholders from reaching other, mutually-acceptable arrangements" should be avoided unless, as ultimately proved to be the case in the Bureau's dealings with wireless carriers and PSAPs in King County,⁶ the parties are unable to resolve the dispute.

4. The Bureau identified the 911 Selective Router as the demarcation point for allocating E911 costs based on the language of section 20.18(d) and the nature and configuration of the existing network components used to provide wireline E911 service. The Bureau explained that, in order for a wireless carrier to satisfy its obligation under section 20.18(d) to provide Phase I information to the PSAP, the carrier must deliver that information to the equipment in the existing 911 system that "analyzes and distributes it" – the 911 Selective Router.⁷ The Bureau's conclusion on the cost allocation issue states as follows:⁸

[T]he proper demarcation point for allocating costs between the wireless carriers and the PSAPs is the input to the 911 Selective Router maintained by the Incumbent Local Exchange Carrier

(...continued from previous page)

presently contingent upon the carrier's receipt of a valid request from a PSAP that is capable of receiving and utilizing the data elements associated with the service and for which a mechanism for the recovery of such PSAP's E911 costs is presently in place. See 47 C.F.R. 20.18(d); see also *City of Richardson*, in which the Commission established readiness criteria for determining the validity of a PSAP's request under section 20.18(j) of its rules, based on the parties' respective obligations for the implementation of Phase I as set forth in the *King County Letter*. See Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Order, FCC 01-293, rel. Oct. 17, 2001, at n.28 (*City of Richardson*).

⁴ Letter from Marlys Davis, E-911 Program Manager, King County E-911 Program Office, Department of Information and Administrative Services, to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, FCC, CC Docket No. 94-102 (filed May 25, 2000) (*King County Request*). On August 16, 2000, the Bureau put this request out for public comment. See Wireless Telecommunications Bureau Seeks Comment on Phase I E911 Implementation Issues, *Public Notice*, CC Docket No. 94-102, DA 00-1875 (August 16, 2000) (*First Public Notice*). PSAPs and other public safety organizations asserted that the appropriate demarcation point for allocating responsibility and associated costs between wireless carriers and PSAPs should be the 911 Selective Router maintained by the Incumbent Local Exchange Carrier (ILEC). A majority of wireless service providers, on the other hand, contended that the appropriate demarcation point should be the carrier's Mobile Switching Center (MSC).

⁵ *King County Letter* at 3.

⁶ The Bureau noted in the *King County Letter* that it had "spent considerable time in discussions and multiple face-to-face meetings with the parties involved attempting to help them reach agreement." *Id.* at 3.

⁷ *Id.* at 4.

⁸ *Id.* at 1.

(ILEC). Thus, under section 20.18(d) of the Commission's regulations governing Enhanced 911 Service (E911), wireless carriers are responsible for the costs of all hardware and software components and functionalities that precede the 911 Selective Router, including the trunk from the carrier's Mobile Switching Center (MSC) to the 911 Selective Router, and the particular databases, interface devices, and trunk lines that may be needed to implement the Non-Call Path Associated Signaling and Hybrid Call Path Associated Signaling methodologies for delivering E911 Phase I data to the PSAP. PSAPs, on the other hand, must bear the costs of maintaining and/or upgrading the E911 components and functionalities beyond the input to the 911 Selective Router, including the 911 Selective Router itself, the trunks between the 911 Selective Router and the PSAP, the Automatic Location Identification (ALI) database, and the PSAP customer premises equipment (CPE).

5. On June 6, 2001, Verizon Wireless, VoiceStream Wireless Corporation, Qwest Wireless, LLC, and Nextel Communications, Inc. (Petitioners or Joint Petitioners) jointly filed a Petition for Reconsideration requesting that the Bureau reconsider its determination that the cost-allocation demarcation point is the input to the 911 Selective Router and find, instead, that the proper demarcation point is the output of the wireless carrier's MSC.⁹ The Joint Petitioners challenge the Bureau's decision on procedural, as well as substantive, grounds. With respect to the latter, they argue that the decision: (1) violates and renders superfluous the regulatory language of section 20.18(j);¹⁰ (2) deviates from the cost allocation for Wireline E911 and discriminates unlawfully against wireless carriers *vis-a-vis* wireline carriers; (3) is based on an erroneous assumption that the network components used to provide wireline E911 service do not include the trunkline from the MSC to the 911 Selective Router; and (4) ignores long-standing cost causer principles and state law. Procedurally, the Joint Petitioners argue that (1) the decision exceeds the Bureau's delegated authority because it contravenes Commission rules, policy and precedent; (2) the scope of the inquiry and conclusion reached require a notice and comment rulemaking proceeding under the Administrative Procedure Act (APA);¹¹ (3) the decision ignores significant carrier comments contained in the record compiled in response to the *First Public Notice*;¹² and (4) King County's request should have been dismissed as an untimely request for reconsideration and an impermissible collateral attack on the Commission's decisions in earlier E911 orders.

III. DISCUSSION

6. As indicated, the Joint Petitioners have raised both substantive and procedural challenges to the Bureau's decision on the E911 cost allocation issue. We will address first the substantive arguments, then the procedural arguments, identified above.

A. Substantive Arguments

7. *Section 20.18 and Related Commission Orders.* We reject Joint Petitioners' arguments that the Bureau's designation of the 911 Selective Router as the cost-allocation demarcation point contravenes the regulatory language of section 20.18(j) and portions of related Commission Orders and that it constitutes a new, Bureau-created policy at variance with the Commission's rules and previous orders.¹³

⁹ Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Petition for Reconsideration, filed June 16, 2001. (*Petition for Reconsideration*).

¹⁰ 47 C.F.R. 20.18(j).

¹¹ 5 U.S.C. section 553(b) and (c).

¹² See fn. 4, *supra*.

¹³ Petition for Reconsideration at 8-15. See also Cal-One Comments at 8-9, CenturyTel Comments at 2-3, Dobson Comments at 3-4, Joint Petitioners' Reply Comments at 6-7.

Both sections 20.18(d) and 20.18(j) are ambiguous regarding the specific respective responsibilities of the parties in implementing Wireless E911 service. Section 20.18(d), *Phase I enhanced 911 services*, states as follows in subparagraph (1):¹⁴

(1) As of April 1, 1998, or within six months of a request by the designated Public Safety Answering Point as set forth in paragraph (j) of this section, whichever is later, licensees subject to this section must provide the telephone number of the originator of a 911 call and the location of the cell site or base station receiving a 911 call from any mobile handset accessing their systems to the designated Public Safety Answering Point through the use of ANI and Pseudo-ANI.

Section 20.18(j), *Conditions for enhanced 911 services*, states as follows with respect to PSAPs' responsibilities:¹⁵

The requirements set forth in paragraphs (d) through (h) [Phase I and Phase II requirements] of this section shall be applicable only if the administrator of the designated Public Safety Answering Point has requested the services required under those paragraphs and is capable of receiving and utilizing the data elements associated with the service, and a mechanism for recovering the Public Safety Answering Point's costs of the enhanced 911 service is in place.

We find that neither section 20.18(d) nor section 20.18(j) clearly specifies to what point in the 911 network the carrier must bring the required data or at what point in the 911 network the PSAP must be capable of receiving and utilizing that data.

8. We also find that the Bureau correctly interpreted these regulatory provisions, in light of the nature and configuration of the existing network components used to provide wireline E911 service, by determining that the analysis of the Phase I data to determine which PSAP should respond to the call and the distribution of that call to the proper PSAP are central to a wireless carrier's obligation to "provide" emergency wireless E911 services. Because it is the 911 Selective Router that performs these functions, the Bureau rightly determined that a wireless carrier must deliver the Phase I data to the 911 Selective Router in order to fulfill its obligations under section 20.18(d).¹⁶ This is the case whether a Non-Call Associated Signaling (NCAS) technology, a Call Associated Signaling (CAS) technology, or a Hybrid CAS technology is employed for implementing Phase I.¹⁷ Thus, we agree with the Bureau that a cost-

¹⁴ 47 C.F.R. 20.18(d)(1).

¹⁵ 47 C.F.R. 20.18(j).

¹⁶ We note that, although most wireless carriers disagree with this interpretation, Nextel appears, by its actions, to acknowledge that the wireless carrier's responsibilities under section 20.18 extend to the input to the 911 Selective Router and thus include the trunkline between the MSC and the 911 Selective Router. Nextel Reply Comments at 7-8.

¹⁷ With an NCAS solution to Phase I, the caller's voice and the actual 20-digit Phase I data (10-digit phone number and 10-digit cell sector number) are transmitted to the PSAP on separate paths. At the time the wireless carrier's MSC receives the call from the base station, it sends the 20-digit information to the Service Control Point (SCP), where it is encoded under a 7-digit ESRK (code) that (1) tells the 911 Selective Router to which PSAP the voice call should be sent and (2) facilitates the PSAP's retrieval of the 20-digit Phase I information from the ALI database. The SCP sends the ESRK back to the MSC, where it is linked to the voice call and forwarded to the 911 Selective Router. Based on the ESRK provided, the 911 Selective Router forwards the call to the appropriate PSAP. Simultaneous with sending the ESRK to the MSC, the SCP sends the ESRK and encoded 20-digit Phase I information to the ALI database, where the cell sector number is used to identify the cell site/sector address. This address, as well as the caller's phone number, are stored until the PSAP retrieves them using the ESRK sent through the 911 Selective Router with the voice call. With Hybrid CAS, the functions performed by the SCP are performed by the Wireless Integration Device (WID), which is installed at, but precedes "the input to," the 911 Selective

(continued....)

allocation demarcation point at the input to the 911 Selective Router is most appropriate because, until the proper PSAP has been identified, no PSAP can “receive” and “utilize” the location data under section 20.18.

9. The Bureau’s letter is in the nature of a declaratory ruling concerning the respective responsibilities of the parties under the Commission’s regulations governing Phase I of E911 service. We affirm that guidance here. The Bureau did not specifically address the parties’ responsibilities with respect to the provision of Phase II information. However, we find that it is the interests of the parties and the public that we continue to anticipate those issues that may create stumbling blocks in the future to a smooth and efficient roll out of Phase II service. To that end, we find that the analysis applied by the Bureau with respect to Phase I logically extends to the obligations imposed on carriers by section 20.18(e).¹⁸

10. Section 20.18(e), *Phase II enhanced 911 services*, provides in pertinent part, “Licensees subject to this section must provide to the designated Public Safety Answering Point Phase II enhanced 911 service, *i.e.*, the location of all 911 calls by longitude and latitude” Like section 20.18(d), section 20.18(e) does not specify to what point in the network the carrier must bring the required Phase II data. We find it appropriate to interpret section 20.18(e) consistently with section 20.18(d), given that the same infrastructure is used to transmit Phase I and Phase II information from the wireless carrier to the appropriate PSAP. Thus, we hereby clarify that, in the absence of an agreement to the contrary between the parties, the input to the 911 Selective Router shall serve as the demarcation point for allocating costs between wireless carriers and PSAPs, both with respect to the delivery of Phase I information and with respect to the delivery of Phase II information. This clarification is consistent with our objectives in enacting section 20.18, namely, the rapid and ubiquitous deployment of wireless E911 capabilities.

11. We reject Petitioners’ argument that statements in various Commission orders support interpreting these regulations to locate the cost allocation demarcation point at the output from the carrier’s MSC.¹⁹ The statements cited are inconclusive regarding which party bears what costs for implementing E911. Rather, we find that these statements, if anything, tend to support the interpretation adopted by the Bureau. For example, the Commission’s inventory of PSAP costs, in both the *E911 First Report and Order* and the *E911 Second Memorandum Opinion and Order*,²⁰ includes only network “upgrades” and omits: (1) the new trunkline between the MSC and the 911 Selective Router needed for all three Phase I technologies –CAS, NCAS, and Hybrid CAS; (2) network components such as the SCP

(...continued from previous page)

Router. CAS transmits all 20 digits of Phase I information with the voice call and requires that the trunkline installed between the MSC and the 911 Selective Router and the trunkline existing between the 911 Selective Router and the PSAP use signaling protocols that will support the transmission of 20 digits of Phase I data. Under a CAS technology, too, the PSAP-identification function is performed by the 911 Selective Router.

¹⁸ As is discussed in further detail *infra* in Section III.B., a reasonable interpretation of existing Commission regulations does not require APA notice and comment.

¹⁹ Petition for Reconsideration at 12-13. Specifically, Petitioners point to the Commission’s statement in the *E911 First Report and Order* that a carrier’s obligation does not arise until the “PSAP . . . has made the investment which is necessary to allow it to receive and utilize the data elements associated with the service.” See *E911 First Report and Order*, 11 FCC Rcd at 18708-09, para. 63. They cite to the Commission’s observation that a PSAP’s anticipated investment includes “switches, protocols, and signaling systems that will allow them to obtain the calling party’s number from the transmission of ANI.” See *id.* at 18709 n.119. They also cite the Commission’s statement in the *E911 Second Memorandum Opinion and Order* that “the bulk of [the] selective routers . . . ALI databases, and 9-1-1 trunks, as well as the PSAP’s own equipment, will have to be upgraded at the PSAP’s own expense to handle the additional ANI and ALI information that will be provided by wireless carriers.” See *E911 Second Memorandum Opinion and Order*, 14 FCC Rcd at 20877-78, para. 66.

²⁰ See fn. 19, *supra*.

for an NCAS solution or the WID for a Hybrid CAS solution,²¹ and (3) associated trunklines connecting these components to other parts of the network. All of these components “precede” the input to the 911 Selective Router in the sequencing of network components for handling a wireless 911 call. Their omission from the Commission’s inventory of PSAP costs suggests that they are the responsibility of the wireless carrier, not the PSAP. When they are coupled with other Commission statements concerning cost-sharing by the parties in implementing E911,²² we conclude that the statements cited by the Petitioners tend to support, rather than contradict, a cost allocation point beyond the wireless carrier’s MSC and the Bureau’s determination that the most appropriate point is the input to the 911 Selective Router.

12. We also reject the argument made by some wireless carriers that the Bureau’s decision constitutes an unauthorized shift of responsibility to wireless carriers for network “add-ons,” such as the SCP or the WID.²³ These carriers contend that PSAPs must bear not only the cost of updating the 911 Selective Router but also, where an NCAS or Hybrid CAS Phase I solution is being used, the cost of the SCP or WID.²⁴ However, under Section 20.18(d), the carrier is responsible for providing Phase I information to the appropriate, or “designated,” PSAP. When a CAS technology is used, the carrier, in order to satisfy Section 20.18(d), simply provides the 10-digit ANI and 10-digit p-ANI to the input of the Selective Router – which, in turn, uses the p-ANI to determine the PSAP to which Phase I information, as well as the 911 call itself, should be sent (*i.e.*, the designated PSAP).²⁵ When an NCAS or Hybrid CAS technology is used, the carrier must deliver Phase I information to the 911 Selective Router in a form that the router can accept and process, and this can only be accomplished through the use of an SCP or a WID. Thus, in order to fulfill its Section 20.18(d) obligations, the carrier, if NCAS or Hybrid CAS is employed, must provide the SCP or WID. We thus do not agree with commenters that such devices are network “add-ons;” rather, they are devices that carriers must furnish in order to satisfy their E911 requirements under our rules.

13. Moreover, in the case of an NCAS solution, for example, the approach advocated by these wireless carriers could push the line of demarcation as far back as the output of the MSC, requiring that the PSAP bear the costs of the trunklines between the MSC and the SCP and, arguably, between the MSC and the 911 Selective Router, as well as the costs of the SCP itself. In addition, the cost allocation would vary depending on the type of Phase I technology chosen by the parties.²⁶ The Commission has strenuously avoided solutions that are other than technology-neutral in crafting regulatory requirements

²¹ Because it transmits the location data with the 911 voice call, a CAS methodology does not require the use of such components.

²² Implicit in its discussions of E911 implementation costs, in general, and its elimination of the carrier cost-recovery prerequisite, in particular, is the Commission’s assumption that such costs will accrue to both wireless carriers and PSAPs. Although it did not state which costs would be attributable to, and thus recoverable by, carriers under the carrier cost-recovery prerequisite, the Commission noted this issue in observing that the parties’ “naturally competing interests” in determining which carrier costs are to be funded had become a major impediment to fulfillment of the prerequisite and to the rapid implementation of E911 service. *See E911 Second Memorandum Opinion and Order*, 14 FCC Rcd at 20869-70, para. 47.

²³ Nextel Reply Comments at 8-10, Sprint Comments at 2-3; *see also* Nextel Comments to *First Public Notice* at 2, TX-CSEC Comments at 3-5, TX-CSEC Reply Comments at 5.

²⁴ The SCP and WID are devices that provide the information that enables the 911 Selective Router to direct the 911 call to the appropriate PSAP. *See* fn. 18 *supra*.

²⁵ Ordinarily, the 911 Selective Router can only accept 8 digits of data. If CAS technology is employed, the Selective Router must be updated so that can accept the 20 digits provided by the carrier.

²⁶ Were a CAS solution adopted, the cost allocation demarcation point would be the 911 Selective Router; were an NCAS or a Hybrid CAS solution adopted, the demarcation point would be further back in the network.

for E911 implementation.²⁷ The argument proffered by the Petitioners and others contradicts this important Commission policy.

14. *Wireless E911 Cost Allocation and Configuration of Wireline Network Components.* We reject Petitioners' argument that the Bureau erred in treating wireless carriers differently from wireline carriers for E911 cost-allocation purposes.²⁸ In the first place, the Bureau did not base its decision on the appropriate demarcation point for allocating costs for the provision of wireless E911 service on the configuration of the network components used to provide wireline E911 service. Nor was it constrained to adopt a wireline cost allocation methodology for the purpose of allocating E911 implementation costs in the wireless context. Thus, we reject Joint Petitioners' assertion that the Bureau's decision discriminates unlawfully against wireless carriers *vis-a-vis* wireline carriers. We agree with TX-CSEC that *US Cellular* provides judicial support for the Bureau's decision. That case, concerning cost recovery, and the case at hand, concerning the nature and extent of the costs themselves, are analogous. In *US Cellular* the court sanctioned the Commission's disparate treatment of wireless and wireline carriers, stating that "an important difference in the way [wireless and wireline] service is regulated," provides "more than sufficient reason" for eliminating the cost recovery prerequisite for wireless carriers, despite wireline carriers' ability to recover their costs through PSAP tariffs.²⁹ Thus, the Petitioners' arguments based on cost-allocation practices in the wireline industry are without merit.

15. Furthermore, we recognize, as did the Bureau, that no single E911 cost allocation paradigm exists for the wireline industry -- the PSAP bears the costs of funding the trunkline between the 911 Selective Router and the wireline carrier's end office in some instances, but not in all instances. In many jurisdictions, ILECs, whose rates are regulated, are treated differently from Competitive Local Exchange Carriers (CLECs), whose rates are not regulated. Specifically, the costs associated with the transmission of an E911 call from the ILEC's end office to the 911 Selective Router are generally borne by the PSAP, but this is not necessarily true for CLECs. The E911 cost allocation for CLECs varies by jurisdiction, and, in many cases, the CLEC is responsible for the costs of transmitting a customer's 911 call from its end office to the 911 Selective Router.³⁰ Had the Bureau viewed wireline E911 cost allocation practices as determinative, the more analogous cost allocation methodology would arguably have been that applicable to CLECs, because both CLECs and wireless carriers can recover their costs from customers in any reasonable manner.

16. Finally, we reject the Petitioners' argument that the Bureau mischaracterized the configuration of the network components used to provide wireline E911 service by failing to include the trunk between the carrier's MSC and the 911 Selective Router in its enumeration of network

²⁷ In the *E911 Third Report and Order*, for example, the Commission expressed reluctance to mandate a handset solution for Phase II. See Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Third Report and Order*, 14 FCC Rcd 17388, 17398-405, paras. 19-34, (1999)(*E911 Third Report and Order*).

²⁸ Petition for Reconsideration at 7 citing *King County Letter* at 3-4; Joint Petitioners' Reply Comments at 7-9. See also Cal-One Comments at 4-7, CenturyTel Comments at 3, Dobson Comments at 4-5, Sprint Comments at 3-5, Nextel Reply Comments at 4-7. Nextel, in particular, contends that there is "nothing fundamentally different" in the functions performed by both that would justify their disparate treatment, and that TX-CSEC's reliance on *US Cellular* to support the Commission's disparate treatment is misplaced because *US Cellular* dealt with the "alteration of the cost recovery scheme," whereas the present proceeding concerns "imposing any particular E911 responsibilities." Nextel Reply Comments at 4-7 citing *United States Cellular Corporation v. Federal Communications Commission*, 254 F.3d 78 (D.C. Cir. 2001)(*US Cellular*); see also TX-CSEC Comments at 6-7, Joint Petitioners' Reply Comments at 9, Joint Commenters Opposition at 5-7.

²⁹ *US Cellular*, 254 F.3d at 87.

³⁰ See Joint Commenters Opposition at 3 n.6.

components.³¹ The Bureau did not misunderstand the parameters of the network used to provide wireline E911 service. When read in context, the sentence at issue neither states nor implies that the trunkline between the wireline carrier's end office and the 911 Selective Router is not one of the network components used to provide wireline E911 service. In some instances, in fact, it is. However, as discussed above, this configuration is neither universal in the wireline context nor determinative as to the resolution of the cost allocation issue in the wireless context.

17. *Other Substantive Arguments.* We reject Joint Petitioners' unsubstantiated argument that several issues raised by commenters in their response to the *First Public Notice*, and allegedly ignored by the Bureau, provide potential bases for reversing the Bureau's decision on the cost allocation issue. Petitioners assert, without elaboration, that the Bureau's allocation of costs to wireless carriers is contrary to "long-standing cost causer principles."³² This contention is without merit. As TX-CSEC notes,³³ the cost causer argument has been laid to rest by the court's decision in *US Cellular* that "on no plausible theory are the PSAPs the cost causers."³⁴ Petitioners also argue that the decision is incompatible with state law³⁵ and "historic practice."³⁶ They neither elaborate on, nor provide substantiation for, these arguments. We are unable to find support in the record for these arguments and therefore reject them.

18. We also reject arguments made by Cal-One and Dobson that the Bureau's decision ignores the disproportionate impact of E911 costs on small and rural wireless carriers.³⁷ The argument that E911 costs will have a disparate, negative effect on small and rural carriers because they have a substantially smaller customer base from which to recoup their costs has been raised and addressed previously by the Commission in the E911 context.³⁸ There, as here, the conclusion must be the same. Because the risk incurred where the dispatcher cannot locate a 911 wireless caller does not vary with the size of the wireless carrier that picks up the call, the Commission's E911 requirements should apply equally to small and rural wireless carriers and to larger carriers. Where our rules impose a disproportionate burden on a particular carrier, the carrier may work with the public safety entities involved to mitigate that burden and, if necessary, may seek individual relief from the Commission.

19. Finally, we reject Petitioners' contention that the Bureau's decision constitutes a "new [Bureau-created] policy" of assigning costs based on a wireless carrier's ability to recoup those costs from its customers.³⁹ The Bureau's observation that wireless carriers can recoup their costs from their

³¹ The language at issue reads, in pertinent part, as follows: "Thus, an interpretation of section 20.18(d) must account for the presence of the existing E911 Wireline Network, which is maintained by the ILEC and paid for by PSAPs through tariffs. . . . The E911 Wireline Network thus consists of: the 911 Selective Router; the trunk line between the 911 Selective Router and the PSAP; the ALI database; and the trunk line between the ALI database and the PSAP." See King County Letter at 3-4.

³² See Petition for Reconsideration at 5 citing Verizon Comments to *First Public Notice* at 2-4, VoiceStream Comments to *First Public Notice* at 6-8, 10-11, Sprint Comments to *First Public Notice* at 7, 14-15; VoiceStream *ex parte* filing of February 6, 2001 at 4-6, 8-9 (VoiceStream *Ex Parte Filing*).

³³ See TX-CSEC Comments at 11.

³⁴ *US Cellular*, 254 F.3d at 84.

³⁵ Petition for Reconsideration at 5 citing Sprint Comments to *First Public Notice* at 9-11.

³⁶ Petition for Reconsideration at 5 citing Verizon Comments to *First Public Notice* at 3-5, VoiceStream Comments to *First Public Notice* at 6-11, Qwest Comments to *First Public Notice* at 10-14.

³⁷ See Cal-One Comments at 9, Dobson Comments at 2-3; but see TX-CSEC Reply Comments at 3-4.

³⁸ See *US Cellular*, 254 F.3d at 88-89. See also *City of Richardson* at paras. 28-29.

³⁹ Petition for Reconsideration at 8-10; see also Joint Petitioners' Reply Comments at 7-9.

customers is not, and was not, determinative of the cost allocation question. It did, however, track the Commission's comments in the *E911 Second Memorandum Opinion and Order* that removal of the carrier cost recovery requirement in section 20.18(j) would have no negative impact on carriers because they could recoup their costs from customers through surcharges or increased rates.⁴⁰ It also addresses a fundamental difference between wireline and wireless carrier cost recovery mechanisms that justifies any disparate treatment in allocating E911 costs between carriers and PSAPs.

B. Procedural Arguments

20. *APA Notice and Comment Requirement and Delegated Authority.* Because the Bureau's decision is a reasonable interpretation of existing Commission rules, policy and precedent, we reject the Joint Petitioners' arguments that it violated the notice and comment requirement in section 553(b) and (c) of the APA.⁴¹ Since 1994, when the Commission initiated the E911 proceeding, it has sought public comment on a variety of issues germane to the implementation of E911 service for wireless callers and has issued a series of orders and accompanying regulatory amendments in response to those comments.⁴² Given the scope and evolving nature of this process, these regulations and orders have necessarily required additional interpretation as the wireless industry moves toward the implementation of E911, and location technologies are developed or modified in response to the Commission's requirements. As discussed previously, section 20.18 is ambiguous concerning the demarcation point for costs associated with the implementation of Wireless E911. Contrary to Petitioners' assertions, the Bureau's decision did not create new law but, instead, constituted a reasonable interpretation of the existing regulation, in view of the Commission's policy goals for the implementation of wireless E911.⁴³ Thus, the Petitioners'

⁴⁰ *E911 Second Memorandum Opinion and Order*, 14 FCC Rcd at 20867, para. 40.

⁴¹ See Petition for Reconsideration at 8-14. See also, e.g., Cal-One Comments at 3-4, Nextel Reply Comments at 2-4. Section 553(b) and (c) of the APA provides, with exceptions not relevant here, that a "[g]eneral notice of proposed rule making shall be published in the *Federal Register*" and that, "[a]fter notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through the submission of written data, views, or arguments."

⁴² Those issues include the use of a handset as opposed to a network solution in implementing Phase II (see *E911 Third Report and Order*, 14 FCC Rcd at 17391-92, paras. 6-8); call validation and 911 calls from non-service-initialized phones (see *E911 First Report and Order*, 11 FCC Rcd at 18689-99, paras. 24-46; Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Memorandum Opinion and Order*, 12 FCC Rcd 22665, 22673, paras. 13-14, (1997)(*E911 First Memorandum Opinion and Order*); Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Second Report and Order*, 14 FCC Rcd 10954 (1999)(*E911 Second Report and Order*); Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, *Report and Order*, rel. Apr. 17, 2002); measurement technologies and accuracy requirements for Phase II caller location requirements (see *E911 First Report and Order*, 11 FCC Rcd at 18711-12, paras. 70-72; *E911 Third Report and Order*, 14 FCC Rcd at 17417-23, paras. 66-77), and wireless carrier cost recovery (see *E911 Second Memorandum Opinion and Order*, 14 FCC Rcd at 20852-54, paras. 3-6).

⁴³ Petition for Reconsideration at 8-14. In *Martin*, for example, the Supreme Court stated that, "in situations in which 'the meaning of [regulatory] language is not free from doubt,' the reviewing court should give effect to the agency's interpretation so long as it is 'reasonable,' that is, so long as the interpretation 'sensibly conforms to the purpose and wording of the regulations.'" *Martin v. Occupational Safety and Health Rev. Comm'n*, 499 U.S. 144, 151 (1991)(*Martin*) citing *Ehlert v. United States*, 402 U.S. 99, 105 (1971) and *Northern Indiana Pub. Serv. Co. v. Porter County Chapter of Izaak Walton League of America, Inc.*, 423 U.S. 12, 15 (1975). Bracketed language in original. Petitioners' citation to *Caruso*, in which the court held that an "agency cannot adopt vague requirements 'and then give it concrete form only through subsequent less formal interpretations'" is also inapposite. *Caruso v. Blockbuster-Sony Music Entertainment*, 174 F.3d 166, 174-75 (3d Cir. 1999)(*Caruso*). See Petition for Reconsideration at 8 n.30.

citations to *Martin* and other cases, in support of its APA argument, are inapposite.⁴⁴

21. With respect to Joint Petitioners' related argument on delegated authority, the Commission is unable to reach a majority on whether the Bureau exceeded its delegated authority in this matter. That issue is rendered moot, however, since the Commission is addressing the merits of the Joint Petitioners' substantive claims.⁴⁵

22. *Other Procedural Issues.* We also reject the Joint Petitioners' argument that the decision is invalid because it fails to address significant carrier comments submitted in response to the *First Public Notice*.⁴⁶ First, except for the delegated authority issue, which is now moot, all of the comments cited by the Joint Petitioners have been addressed, either in the underlying *King County Letter*, or in this reconsideration decision.⁴⁷ Secondly, this argument is based on case law concerning decisions subject to the APA's notice and comment requirement. However, as previously indicated, the Bureau's decision was a reasonable interpretation of the Commission's existing regulation.⁴⁸ As such, it did not constitute an amendment of the regulation and did not require notice and the opportunity for comment prior to its implementation. The Bureau's decision is subject only to the more general requirement in section 706 of the APA that an agency provide a reasoned basis for its decision to facilitate judicial review thereof. The Bureau's decision complies with this requirement.⁴⁹

23. Finally, we reject the Petitioners' argument that King County's request should have been dismissed as an untimely request for reconsideration of the Commission's earlier decisions regarding PSAP obligations or as an impermissible collateral attack on those decisions.⁵⁰ King County was neither seeking reconsideration of, nor mounting a collateral attack on, earlier Commission decisions regarding a PSAP's E911 obligations under section 20.18. It merely sought clarification of a Commission rule and associated orders that are acknowledged to be ambiguous. Its request was tantamount to a Petition for

⁴⁴ See also *Trinity Broadcasting of Florida, Inc. v. Federal Communications Commission*, 211 F.3d 618 (D.C. Cir. 2000), *Cassell and Kelley Communications, Inc. v. Federal Communications Commission*, 154 F.3d 478 (D.C. Cir. 1998).

⁴⁵ See *Beehive Telephone, Inc. v. Bell Operating Cos.*, 12 FCC Rcd. 17930, 17938-39, para. 16, (1997), *petition for review dismissed in part and denied in part, Beehive Telephone Co., Inc. v. FCC*, 179 F.3d 941 (D.C. Cir. 1999).

⁴⁶ See Petition for Reconsideration at 4-6; see also CenturyTel Comments at 2, Dobson Comments at 3, Joint Petitioners' Reply Comments at 2-3.

⁴⁷ For example, in this order, we address arguments that: (1) King County's request is an impermissible collateral attack and an untimely petition for reconsideration (para. 23); (2) the Bureau's decision contravenes cost-causer principles, state law, and historic practice (para. 17); and (3) the Bureau's decision unreasonably discriminates among wireless and wireline carriers (para. 13-14).

⁴⁸ See para. 17 *supra*.

⁴⁹ The fact that the Bureau did, in fact, solicit comments on the cost allocation issue, in an attempt to promote a dialogue among the parties, does not alter this result.

⁵⁰ Petition for Reconsideration at 5 *citing VoiceStream Ex Parte Filing* at 2-3. Petitioners' assertion references an earlier argument made by VoiceStream in response to the *First Public Notice*. In its comments, VoiceStream contended that the King County request must be dismissed, "insofar as it seeks a redefinition of the PSAP E911 network to exclude the facilities and database components needed for wireless E911 calls." See *VoiceStream Ex Parte Filing* at 2-3. VoiceStream's argument is predicated on a misconstruction of the nature of King County's request.

Clarification.⁵¹ Such petitions are a commonplace of regulatory practice and may be filed whenever a member of the public requires assistance regarding the proper construction of a Commission rule or order.

IV. PROCEDURAL MATTERS AND ORDERING CLAUSES

A. Regulatory Flexibility Act

24. The Commission is not required by the Regulatory Flexibility Act, 5 U.S.C. § 604 to prepare a Regulatory Flexibility Analysis of the possible economic impact of this Order on small entities.

B. Paperwork Reduction Act of 1995 Analysis

25. This order does not contain an information collection.

C. Ordering Clauses

26. Accordingly, IT IS ORDERED that the Petition for Reconsideration filed jointly by Verizon Wireless, VoiceStream Wireless Corporation, Qwest Wireless, LLC, and Nextel Communications, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵¹ See *King County Letter* at 1 n.2.

Appendix A

Petition:

Verizon Wireless, VoiceStream Wireless Corporation, Qwest Wireless, LLC, Nextel Communications, Inc. (Joint Petitioners)

Comments:

Cal-One Cellular, LP (Cal-One)
CenturyTel Wireless, Inc. (CenturyTel)
Dobson Communications Corporation (Dobson)
Joint Opposition of NENA, APCO and NASNA as Public Safety Communicators (Joint Commenters)
Sprint PCS
Texas 911 Agencies (TX-CSEX)

Reply Comments:

Joint Petitioners
Nextel Communications, Inc. (Nextel)
TX-CSEC

May 9, 2001

Marlys R. Davis
E-911 Program Manager
King County E-911 Program Office
Department of Information and Administrative Services
7300 Perimeter Road South, Room 128
Seattle, Washington 98108-3848

Re: King County, Washington Request Concerning E911 Phase I Issues

Dear Ms. Davis:

This letter responds to your letter dated May 25, 2000, in which you request assistance in resolving a conflict concerning implementation of Phase I of Enhanced 911 (E911) service in Washington State. Specifically, you inquire as to "whether the funding of network and database components of Phase I service, and the interface of these components to the existing 911 system [is] the responsibility of the wireless carriers or the [Public Safety Answering Points] PSAPs."¹

Based on the language of the Commission's E911 rules and its E911 orders, discussed below, the Wireless Telecommunications Bureau (Bureau) clarifies the question of cost allocations for Phase I implementation in King County, based on the record before us.² Specifically, under the Commission's rule at section 20.18(d) requiring wireless carriers to provide Phase I service, the Bureau clarifies that the proper demarcation point for allocating costs between the wireless carriers and the PSAPs is the input to the 911 Selective Router maintained by the Incumbent Local Exchange Carrier (ILEC). Thus, under section 20.18(d) of the Commission's regulations governing Enhanced 911 Service (E911), wireless carriers are responsible for the costs of all hardware and software components and functionalities that precede the 911 Selective Router, including the trunk from the carrier's Mobile Switching Center (MSC) to the 911 Selective Router, and the particular databases, interface devices, and trunk lines that may be needed to implement the Non-Call Path Associated Signaling and Hybrid Call Path Associated Signaling methodologies for delivering E911 Phase I data to the PSAP. PSAPs, on the other hand, must bear the costs of maintaining and/or upgrading the E911 components and functionalities beyond the input to the 911 Selective Router, including the 911 Selective Router itself, the trunks between the 911 Selective Router and

¹ Letter from Marlys R. Davis, E911 Program Manager, King County E-911 Program Office, Department of Information and Administrative Services, to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, dated May 25, 2000 (King County Letter).

² See 47 CFR §§ 0.131(a) and 0.331(a). The Bureau has interpreted this request as an inquiry concerning the Commission's Phase I requirements in section 20.18, and not a request pursuant to paragraphs seven and 92 of the *E911 Second Memorandum Opinion and Order*, concerning which party has authority to select the particular Phase I implementing technology. See Revision of the Commission's Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, *Second Memorandum Opinion and Order*, 14 FCC Rcd 20850, 20854, 20886 (paras. 7, 92)(1999) (*E911 Second Memorandum Opinion and Order*).

the PSAP, the Automatic Location Identification (ALI) database, and the PSAP customer premises equipment (CPE).

Background

The Commission's E911 Second Memorandum Opinion and Order. The cost-allocation question you have raised derives, in part, from the Commission's decision in the *E911 Second Memorandum Opinion and Order*.³ There, the Commission decided to eliminate its previous requirement that a carrier cost recovery mechanism be in place before a wireless carrier is obligated to implement E911 services.⁴ Following removal of the carrier cost recovery requirement, the prerequisites for a carrier's E911 obligation are: (1) the carrier's receipt of a valid request from a PSAP capable of receiving and utilizing the data elements associated with the service; and (2) the existence of a cost recovery mechanism for recovery of the PSAP's E911 service costs. Accordingly, the Commission's implementing regulation at section 20.18(j) imposes E911 requirements on wireless carriers if the PSAP has requested Phase I services and "is capable of receiving and utilizing the data elements associated with the service."

Basis for Request. In the King County Letter, you state that King County and several other counties in Washington State have ordered Phase I service from wireless carriers who offer service within the State. You assert that PSAPs in King County and in the other counties in Washington State are capable of receiving the Phase I information over the existing E911 network, and displaying the information on the existing E911 equipment. Therefore, King County asserts that it has met the requirements in section 20.18(j) for ordering Phase I service and the wireless carriers are obligated to provide that service within six months of the orders.

Public Notice. On August 16, 2000, the Bureau issued a *Public Notice* seeking comment on King County's request, including four issues implicated in the inquiry: (1) whether a clear demarcation point exists in the E911 network that distinguishes between carriers' and PSAPs' responsibilities for E911 Phase I implementation; (2) whether that point varies according to the technology employed to provide Phase I services; (3) whether there is a rationale or precedent respecting wireline 911 services that provides guidance in allocating responsibility and costs between wireless carriers and PSAPs; and (4) whether certain costs associated with implementing Phase I technologies should be borne or shared by ILECs.⁵

³ *E911 Second Memorandum Opinion and Order*, 14 FCC Rcd at 20866-67 (paras. 38-40).

⁴ The Commission found that the carrier cost recovery requirement had been a source of ambiguity and controversy and had impeded the implementation of Phase I. It further found that, since wireless carrier rates are unregulated, there was no need for a government-mandated carrier cost recovery mechanism, noting that carriers are free to recover these costs in their charges to customers, either through their service rates or through specific surcharges on customer bills. Nevertheless, the Commission emphasized that states are free to have a carrier cost recovery mechanism in place if they so choose. *Id.* See also 47 CFR § 20.18(d)(2000).

⁵ Public Notice, DA 00-1875, *Wireless Telecommunications Bureau Seeks Comment on Phase I E911 Implementation Issues*, CC Docket No. 94-102, rel. Aug. 16, 2000. With respect to the fourth question, concerning ILECs, we note our continuing concern, based on numerous reports, over the timely provisioning by ILECs of the necessary network components and associated services for Phase I implementation. While we take no action at this point, we will closely monitor this matter to determine whether the Bureau should recommend that the Commission revisit the issue in the near term.

Comments. Eighteen parties filed comments in response to the Public Notice; seven parties filed reply comments. A majority of wireless service providers contend that the PSAP is responsible for any system upgrades necessary to deliver Phase I information in a form compatible with the existing 911 network and, thus, that the appropriate demarcation point is the wireless carrier's MSC. PSAPs and other public safety organizations, on the other hand, assert in their comments that carriers must provide Phase I data in a form usable by the PSAP and, thus, that the appropriate demarcation point for allocating responsibilities and associated costs between wireless carriers and PSAPs is the dedicated 911 Selective Router maintained by the ILEC. For those reasons set forth below, the Bureau views section 20.18(d) as requiring wireless carriers to bear all Phase I costs up to the input of the 911 Selective Router and PSAPs to bear all Phase I costs beyond that point.

Discussion

At the outset, we emphasize that the Commission continues to favor negotiation between the parties as the most efficacious and efficient means for resolving disputes regarding cost allocations for implementing Phase I. Our experience throughout this proceeding reveals that the variety of situations existing in approximately 6,000 PSAPs across the nation, including differences in state laws and regulations governing the provision of 911 services, the configuration of wireless systems, the technical sophistication of existing 911 network components, and existing agreements between carriers and PSAPs, argue against a uniform federal mandate that prevents the relevant stakeholders from reaching other, mutually-acceptable arrangements on how to satisfy the Commission's location accuracy mandates. It was for this reason that the Commission adopted a case-by-case approach in addressing disputes over the locus of authority in selecting the Phase I implementation methodology for a particular jurisdiction.⁶ Indeed, the Bureau has spent considerable time in discussions and multiple face-to-face meetings with the parties involved attempting to help them reach agreement. Because they have been unable to resolve this dispute in the period since King County filed its request for assistance almost a year ago, however, the Bureau clarifies the obligations of the parties under section 20.18 as follows.

Section 20.18(d)(1) of the Commission's rules states that wireless carriers must "provide the telephone number of the originator of a 911 call and the location of the cell site or base station receiving a 911 call from any mobile handset accessing their systems to the designated Public Safety Answering Point through the use of ANI and Pseudo ANI."⁷ This obligation is contingent on the requesting PSAP's being "capable of receiving and utilizing the data elements associated with the [Phase I] service."⁸ The Commission, by this rule, has made carriers responsible for *providing* Phase I information to PSAPs.

Thus, an interpretation of section 20.18(d) must account for the presence of the existing E911 Wireline Network,⁹ which is maintained by the ILEC and paid for by PSAPs through tariffs. It includes the 911

⁶ See n. 2, *supra*.

⁷ The ANI is a caller's 10-digit phone number (including the 3-digit area code). The Pseudo ANI, or p-ANI, is the unique 10-digit number that identifies the cell sector location of the base station handling the call.

⁸ See 47 CFR § 20.18(j).

Selective Router, which receives 911 calls from the Central Offices of the various LECs (e.g., the regional ILEC and any number of Competitive Local Exchange Carriers) and forwards the calls to the particular PSAP that serves the caller's area. The caller's phone number is transmitted to the PSAP along with the 911 voice call. The PSAP uses that phone number to obtain various information about the caller from the ALI database, e.g., the caller's name and address, etc. The E911 Wireline Network thus consists of: the 911 Selective Router; the trunk line between the 911 Selective Router and the PSAP; the ALI database; and the trunk line between the ALI database and the PSAP.

When a wireless 911 call is made, the wireless carrier must bring the wireless call, as well as the information about the caller (i.e., the caller's phone number and location) to the E911 Wireline Network for processing. The E911 Wireline Network processes data received from the wireless carrier with the voice call. Thus, in order for wireless carriers to satisfy their obligation under section 20.18(d) to provide Phase I information to the PSAP, carriers must deliver that information to the equipment that analyzes and distributes it – i.e., to the input to the 911 Selective Router. We thus agree with parties who believe that the appropriate demarcation point for allocating responsibilities and costs between wireless carriers and PSAPs is the input to the 911 Selective Router.

As compared with the wireline E911 system, there are additional costs for the transmission of wireless Phase I information to the PSAP that are attributable to certain complexities not involved with the simpler operation of transmitting a wireline caller's eight-digit phone number.¹⁰ These complexities derive from the fact that Phase I information (ANI and p-ANI) contains a total of 20 digits, but that neither 911 Selective Routers, the trunks from 911 Selective Routers to PSAPs, nor PSAPs' CPE were initially designed to handle more than eight digits.¹¹ Various techniques have been developed to enable the provision of Phase I data to the PSAP. These techniques involve enhancements and/or "add-ons" to the existing 911 Wireline Network. The techniques are referred to as: Non-Call Path Associated Signaling (NCAS); Call Path Associated Signaling (CAS); and Hybrid CAS (HCAS). Having determined that the input to the 911 Selective Router marks the point for allocating Phase I costs between the wireless carriers and the PSAPs, we now provide guidance with respect to the various additional/specific responsibilities carriers and PSAPs will be expected to meet in implementing these signaling techniques.¹²

⁹ See, e.g., *E911 Second Memorandum Opinion and Order*, 14 FCC Rcd 20886-87 (paras. 92, 94); Revision of the Commission's Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 18676, 18710 (para. 66)(1996).

¹⁰ The wireline caller's phone number, in this context, is the caller's standard seven-digit phone number plus an additional digit to indicate the caller's area code.

¹¹ These components generally support Centralized Automated Message Accounting signaling, which is an in-band signaling protocol that is designed to transport up to eight digits.

¹² The following discussion of Phase I data transmission techniques contains information provided in Sprint PCS's Comments filed on Sept. 18, 2000 and in the "Enhanced 911 Funding Study for Wireless Telecommunications in Washington State" dated Dec. 31, 1998, and filed on Mar. 30, 1999, by the Washington State Department of Revenue.

NCAS requires the use of a Service Control Point (SCP), which is a database that receives a caller's 20-digit ANI and p-ANI from the carrier's MSC and returns to the MSC a seven or eight-digit routing key.¹³ The routing key is then sent to the 911 Selective Router, and thence to the appropriate PSAP via a Centralized Automated Message Accounting (CAMA) trunk. At the same time, the routing key and the caller's ANI and p-ANI are forwarded to the ALI database. The PSAP retrieves the caller's ANI and p-ANI information (*i.e.*, the caller's phone number and cell sector location) from the ALI database by requesting the information that is associated with the routing key it receives from the 911 Selective Router.¹⁴ NCAS thus requires a trunk from the wireless carrier's MSC to the SCP, the SCP itself, and a trunk from the SCP to the ALI database. If a wireless carrier employs NCAS, in addition to being responsible for the trunk from its MSC to the 911 Selective Router, the carrier must implement these additional components in order to meet its obligation to provide Phase I information to the PSAP.

With CAS, the 20 digits of Phase I data are transmitted over the trunk from the wireless carrier's MSC to the 911 Selective Router. These trunks must therefore be capable of effectively transporting this number of digits.¹⁵ The 911 Selective Router contains a database that links the caller's p-ANI to a particular PSAP. Once the appropriate PSAP has been identified, the 911 Selective Router forwards the 20 digits, along with the voice call, to that PSAP. An additional requirement of CAS is that the trunk from the 911 Selective Router to the PSAP, the 911 Selective Router itself, and the PSAP's CPE, must each be capable of handling 20 digits. If CAS is employed, the wireless carrier will be responsible for providing trunks that are capable of handling the 20 digits of Phase I information from its MSC to the 911 Selective Router. The PSAP will be responsible for any required upgrades to the 911 Selective Router itself, the trunk from the 911 Selective Router to the PSAP, and the PSAP CPE.

HCAS contains certain elements found in CAS and NCAS. It employs a Protocol Converter, or Wireless Integration Device (WID), which is located at the 911 Selective Router. This device receives the caller's ANI and p-ANI from the carrier's MSC and converts the 10-digit p-ANI into a seven or eight-digit routing key, which is sent to the 911 Selective Router and then transported to the PSAP on the CAMA trunk that connects the 911 Selective Router to the PSAP. At the same time, the caller's ANI and p-ANI are transmitted from the WID to the ALI database. The routing key performs the same function as the NCAS routing key (*i.e.*, enabling the retrieval of the caller's Phase I information from the ALI database). In order to implement HCAS, the WID and the trunk from the WID to the ALI database must be added to the E911 Wireline Network, and the trunk from the carrier's MSC to the WID must be capable of handling 20 digits. Thus, if HCAS is employed, the carrier will be responsible for the cost of the WID, the trunk from the WID to the ALI database, and the trunk from the carrier's MSC to the WID.

While the costs of installing, maintaining, and upgrading components necessary to deliver Phase I

¹³ The routing key is a seven or eight-digit number that is uniquely associated with a particular 911 call, and is used by the 911 Selective Router to determine the appropriate PSAP to which to send the call.

¹⁴ The ALI database provides to the PSAP, *inter alia*, the caller's phone number and cell sector location, and the name of the caller's wireless carrier.

¹⁵ The 20 digits may be transported on the trunk from the MSC to the 911 Selective Router using either Signaling System 7 or Feature Group D signaling.

information to the 911 Selective Router are not insubstantial, we believe that these costs properly repose with the wireless carrier rather than with the PSAP. These Phase I costs are directly attributable to the unique nature of the service provided, *i.e.*, the mobility of the wireless caller, which generates costs associated with identifying the caller's phone number and location. A major reason consumers give for subscribing to wireless services is security and safety, which includes access to 911 services. Thus, it does not seem inappropriate to make the carriers responsible for those expenditures necessary to deliver location information in a usable form to the E911 Network so as to ensure that their customers have access to enhanced 911 services. Moreover, as telecommunications carriers whose rates are not regulated, wireless carriers have the option of covering these Phase I costs through their charges to customers, either through their prices for service or through surcharges on customer bills.

We note that the decision we reach today does not impose the entire cost burden for Phase I implementation on wireless carriers, but places a share of these costs on PSAPs. For example, under the Commission's rules, PSAPs are responsible for any upgrades necessary to the 911 Selective Router, the trunking from the 911 Selective Router to the PSAP, and the trunking from the PSAP to the ALI database, as well as upgrades to PSAP hardware and software necessary to make use of the location information. In any event, whether the wireless carrier or the PSAP initially bears a particular set of Phase I costs, wireless customers will, in all likelihood, eventually bear the bulk of the overall costs of implementing Phase I, since in most jurisdictions, the PSAPs' costs of implementing wireless E911 are recovered through a tax or surcharge imposed on wireless subscribers.

The decision we reach here addresses the issue of where the responsibilities lie between the wireless carrier and the PSAP in terms of the costs of implementing E911 Phase I service, under the facts and circumstances of this case and the record before us. We do not address the issue of which party – PSAP or carrier – may choose the transmission method and technology to be used to provide Phase I. We note that, rather than establishing a rule, the Commission has encouraged PSAPs and carriers to reach agreement on an appropriate method for transmitting E911 information to the PSAP, given the circumstances of each situation. If disputes occur, however, the Commission has identified certain factors, among others, that Commission staff should consider in addressing the issues; for example, the additional costs of the two methodologies to the PSAP and the wireless carrier; and the ability of the transmission technology to accommodate Phase II of wireless E911 and other planned changes in the E911 system.

We encourage the parties in King County and elsewhere to work cooperatively to reach agreement on the technology to be used in each case and note the concerns we would have should any carrier unilaterally select a technology that could not be used by the PSAPs in that jurisdiction or that could not be used to meet its upcoming Phase II obligations, in order to shift costs from itself to the PSAP. We expect carriers to negotiate in good faith with the PSAPs concerning the appropriate Phase I technology, based on the totality of the circumstances before them, including what best serves the PSAP and their own subscribers' interest in having timely access to E911 services.

We trust that we have fully answered your questions and that the guidance offered herein will be helpful. Should you have any questions with respect to any portion of this letter, please do not hesitate to contact the Bureau's Policy Division at (202) 418-1310.

Sincerely,

Thomas J. Sugrue
Chief, Wireless Telecommunications Bureau

cc: AT&T Wireless Services, Inc.
Nextel Communications, Inc.
Qwest Wireless, LLC
Sprint PCS
Verizon Wireless
VoiceStream Wireless Corporation